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FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of:) MM DOCKET No.: 97-122
)
GERARD A. TURRO) File No.: BRFT-970129YC
) BRFT-970129YD
)
For Renewal of License for)
FM Transistor Stations)
W276AQ(FM), Fort Lee, New)
Jersey, and W232AL(FM),)
Pomona, New York,)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.)
)
Order to Show Cause Why the)
Construction Permit for FM)
Radio Station WJUX(FM),)
Monticello, New York, Should)
Not Be Revoked)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Courtroom 1
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
September 3, 1997

The parties met, pursuant to the notice of the
Judge, at 10:30 a.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

On behalf of MONTICELLO MOUNTAINTOP BROADCASTING,
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APPEARANCES: (Continued)

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On behalf of GERARD A. TURRO:

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On behalf of the FCC:

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P R O C E E D I N G S

10:30 A.M.

JUDGE STEINBERG: Okay, we are on the record now.

This is a further prehearing conference in MM Docket No. 97-122. I called the conference on my own motion for the purpose of discussing a motion to suspend and reschedule dates which was filed by Monticello Mountaintop Broadcasting, Incorporated.

First, why don't we put the appearances of counsel on the record. For Gerard A. Turro?

MR. NAFTALIN: Charles Naftalin for Mr. Turro.

JUDGE STEINBERG: For Monticello Mountaintop Broadcasting, Inc.?

MR. RILEY: James Riley for Monticello Mountaintop Broadcasting, Inc.

JUDGE STEINBERG: For Universal Broadcasting of New York?

MR. HELMICK: Richard Helmick, of Cohn and Marks.

JUDGE STEINBERG: And for the Chief, Mass Media Bureau?

MR. ARONOWITZ: Alan Aronowitz and Susan Friedman.

JUDGE STEINBERG: Thank you.

Before we turn to the discussion of Mr. Riley's motion, there is something I wanted to put on the record. Everyone knows about this because I informed everybody of

1 this.

2 On Wednesday evening, June 25, 1997, I was talking
3 to my cousin, whose name is Naomi Segall, on the telephone.
4 During the course of the conversation she mentioned that
5 something funny had happened to her daughter, Debbie Segall,
6 at work. Specifically, Debbie had seen my name on a
7 document at the radio station where she works, and told her
8 mother about it. It turned out that Debbie works for
9 Station WVOS(FM), in Liberty, New York. Her boss is Gene
10 Blabey, and she knows Carol Montana, and Blabey and Montana
11 are potential witnesses in this case. And I believe at the
12 time all this occurred their depositions were going to be
13 taken within the next several days.

14 On Thursday, June 26, 1997, I called Charles
15 Naftalin and Roy Russo, who is another -- one of Universal's
16 counsel; Alan Aronowitz; Kathy Schmeltzer, who is Gene
17 Blabey's attorney; and Jim Edmunson, who is Carol Montana's
18 attorney; and told them what I had discovered.

19 On Friday, June 27, 1997, I spoke with Mr. Riley,
20 and told him about these events. He was out of the office
21 on June 26th.

22 Each counsel was informed that I would put this
23 disclosure on the record at the earliest opportunity, and
24 this is the earliest opportunity, and so I am putting it on
25 the record. Presumably, there was no problem. Of course,

1 this was in June, and this is several weeks later. So if
2 there was a problem, I am sure I would have known about it.

3 Okay, now, let me turn the floor over to Mr.
4 Riley.

5 MR. RILEY: Well, Your Honor, I filed the motion
6 to suspend and reschedule dates last week for the reasons
7 essentially stated in the motion. I can tell you that Dr.
8 Lichtstein's letter to me attached to that motion, I have
9 the original of it, by the way, with me, but it's -- what I
10 filed is a facsimile of his letter because I wanted to get
11 this on file as quickly as possible.

12 I had mentioned in a footnote in a pleading filed
13 earlier, I had talked to Mr. Aronowitz at the time that
14 Monticello Mountaintop was due to respond to the Bureau's
15 second set of interrogatories, and had told him that we were
16 going to file a response on the due date; but that it would
17 not be signed by Mr. Weis, who had been admitted to the
18 hospital for emergency surgery. What we filed was the
19 answers that Mr. Weis and I had worked on through that
20 point.

21 When I spoke to Mr. Aronowitz that day, I didn't
22 have any notion of how the surgery had progressed. In fact,
23 I think it was taking place that very day; he'd been
24 admitted just a few days before that.

25 After the surgery, I spoke with family members of

1 Mr. Weis, and got from Mr. Weis's brother-in-law the name of
2 Mr. Weis's cardiologist, the author of this letter, Dr.
3 Lichtstein.

4 Dr. Lichtstein's letter to me is my complete
5 knowledge of the medical forecast here, and I wouldn't try
6 to advance any medical opinion other than what Dr.
7 Lichtstein states. I can only add to what he says.

8 This: I have spoken with Mr. Weis since receiving
9 Dr. Lichtstein's letter, and Mr. Weis accepted and supports
10 my recommendation to him of the date that we suggest in this
11 motion to suspend and reschedule dates based on his -- well,
12 I have to assume that his support of the motion is based on
13 his understanding of Dr. Lichtstein's recommendations.

14 And that's really what I can say, Your Honor.

15 JUDGE STEINBERG: Okay. I am just going to go
16 around the room and ask for comments. Mr. Naftalin?

17 MR. NAFTALIN: Mr. Turro understands Mr. Weis's
18 condition, and certainly does not object to an extension to
19 accommodate his health. And, in fact, we don't object to
20 the date proposed by MMBI. We would like to say, though,
21 that we would like to proceed with this case. Mr. Turro
22 would like to get it behind him. And so while we have no
23 objection to the December 2nd date as proposed, if for
24 whatever reason there was another considerable extension
25 contemplated, we very likely at that time would seek to

1 pursue some kind of procedures to allow Mr. Turro to defend
2 himself separate from Mr. Weis, if that were necessary. But
3 we have no objection at this time.

4 JUDGE STEINBERG: Okay. Mr. Helmick?

5 MR. HELMICK: Your Honor, the dates proposed by
6 Mr. Riley, I think, are generally acceptable. It might be
7 helpful, I think the real operative medical opinion, if you
8 will, on this would really be maybe, rather than his
9 cardiologist, with his bypass surgery his heart is probably
10 functioning better than anyone's in this room at this point,
11 it might be his surgeon, to see whether or not it's possible
12 to speed up the time table or what.

13 I think -- I am not so concerned about speeding up
14 the time table, but I would hate to be -- have there be
15 another request for delay because things are -- for whatever
16 medical reason or not -- are not working out.

17 We ought to, I would suggest, getting another
18 letter from a surgeon, and then deciding whether we ought to
19 bifurcate this hearing. There is no reason why we couldn't
20 proceed with Mr. Turro, if necessary.

21 JUDGE STEINBERG: Mr. Aronowitz?

22 MR. ARONOWITZ: I can only express my sentiments.
23 I think I am pretty much in agreement with everybody.

24 JUDGE STEINBERG: Okay. Let me throw out some
25 ideas and then you all can tell me why they are bad, and

1 when I set up the original dates we had the two-part
2 exchange, and the two-part exchange was -- I didn't go back
3 and re-read the transcript of the earlier prehearing
4 conference, perhaps I should have, but when we set up the
5 two dates, the first date was for the Bureau and Universal
6 to exchange, and the second date was for Turro and MMBI to
7 exchange. So that, in essence, MMBI and Turro would be
8 putting in the rebuttal case early on.

9 Do I remember that correctly? Okay, I see
10 everybody nodding in the affirmative except for Mr. Riley,
11 who is thinking about it.

12 MR. RILEY: Well, I have the transcript of the
13 conference with me, Your Honor.

14 JUDGE STEINBERG: Yes.

15 MR. RILEY: But I -- I think that's essentially
16 right. MMBI is in a slightly different posture than Mr.
17 Turro in that the Bureau has the burden of going forward and
18 the burden of proof. And what I -- the position I took at
19 the prehearing conference was that until we see the Bureau's
20 evidence, we don't know that we have anything to exchange
21 really, because what we need to address is their exchange.
22 It simply seemed to me that we had to see it first.

23 It is in the nature of rebuttal; you are quite
24 right.

25 JUDGE STEINBERG: Okay. Now, my idea was can we

1 go forward with the Turro part of the case as presently
2 scheduled? Obviously, the dates for the exchange would have
3 to be amended. Can we go forward with everything relating
4 to Mr. Turro on the presently scheduled hearing date, which
5 I have forgotten.

6 MR. NAFTALIN: October 14th.

7 JUDGE STEINBERG: October 14th. And proceed with
8 the MMBI part of the case along the lines of the schedule
9 proposed by Mr. Riley.

10 If you want to, we will go off the record and bat
11 that around a little bit because everybody is thinking, and
12 everybody is thinking, you know, why is this a bad idea, or
13 why is it a good idea. You know, maybe you want to discuss
14 this among yourselves with me outside the room before you
15 respond. It's up to you. Do you want to do that?

16 MR. RILEY: Well, Your Honor, before we do go off
17 the record --

18 JUDGE STEINBERG: Okay.

19 MR. RILEY: -- and maybe it would be advisable off
20 the record since I don't know that any counsel discussed
21 this possibility amongst themselves. But there is an issue,
22 although the burdens are different between Mr. Turro and
23 MMBI, they have different burdens, MMBI not having a burden,
24 there is an issue that is identical as stated in mirror
25 image, issue six against MMBI and issue two, which is Mr.

1 Turro's issue.

2 So that it is possible, again, not knowing what
3 the Bureau would exchange, it is possible that Mr. Turro
4 will want Mr. Weis as a witness. That is the unauthorized
5 transfer, the whole issue.

6 JUDGE STEINBERG: All right.

7 MR. RILEY: I observe that because I am not sure
8 whether -- although I think we should go off the record to
9 discuss it -- I don't know that I can -- I simply haven't
10 contemplated this, and I don't know where I would come out
11 on that.

12 I do know this though, and this is one thing I
13 wanted to say before we go off the record, I don't feel I
14 could agree to something that would have Mr. Weis as an
15 active trial participant earlier than Dr. Lichtstein's
16 letter. I simply can't do that. I am not in a position.

17 JUDGE STEINBERG: No. I would say if it's
18 necessary for Mr. Weis to be a witness, then we could put
19 his testimony off.

20 MR. RILEY: Yes.

21 JUDGE STEINBERG: I certainly wouldn't require him
22 to come in before he was physically able to.

23 Now, I think I will give more weight to -- I will
24 give more weight to what Mr. Aronowitz wants because they
25 have the bulk of the burdens. It might not be possible for

1 you to prepare one set of exhibits for this purpose and then
2 prepare another set of exhibits for that purpose. I mean,
3 there might be stuff that you just can't separate out. You
4 might just want to exchange one set of exhibits and it
5 pertains to everything, or certain exhibits pertain to one
6 thing, certain exhibits pertain to another thing, and then
7 the rest pertain to everything. So I mean, I throw this out
8 as an idea that I had.

9 Do you want to go off the record? Let's go off
10 the record.

11 (Discussion off the record.)

12 JUDGE STEINBERG: Okay, we are back on the record.

13 As I suspected, while we were off the record
14 everybody told me what a bad idea it was to bifurcate the
15 case, and I agree, and it would be far more efficient to try
16 the case all at one time, and all the parties agree to that,
17 and nobody had any objection to the schedule proposed by Mr.
18 Riley in his motion. So that schedule will be adopted, and
19 I will issue an order after the conference today
20 incorporating those dates.

21 But basically the hearing will be postponed until
22 December 2, 1997, and then the other procedural dates, I
23 will put in the order.

24 Mr. Riley has agreed to submit to everyone a
25 progress report on Mr Weis's health on or before October 15,

1 1997, and then if there is a continuing -- if there is a
2 problem with Mr. Weis's ability to assist Mr. Riley in this
3 case or to testify, then, you know, we should know that well
4 in advance, and then we can meet at that time and consider
5 alternatives. But let's not worry about it now.

6 Another thing that I wanted to talk about today
7 was discovery. In my order FCC 97 M-90 released May 22,
8 1997, I set August 22 as the date for completion of all
9 discovery. We still have, according to my records, two
10 matters that are open, and then a possible third matter
11 appeared in my in-box this morning.

12 The two matters are the deposition of Serge
13 Loginow, and that is pending before the Commission. Nobody
14 in this room has the authority or any influence with regard
15 to that matter, so that's just going to sit there until it
16 sits there.

17 Now, if the deposition -- if the Commission
18 permits the deposition, then I will expect that to be done
19 as expeditiously as possible. If the Commission turns down
20 the request for deposition, then as far as I'm concerned
21 that matter is closed. There won't be another opportunity
22 to ask questions of Mr. Loginow.

23 Now, this leads to my second bad idea of the day,
24 and that is I thought that -- well, let me backtrack a
25 little bit.

1 Mr. Riley and Mr. Naftalin have submitted
2 interrogatories to Mr. Loginow that have already been
3 answered. It's my understanding that there is some follow
4 up of the answers that is desired, and that's what leads to
5 my second bad idea of the day. Usually I only come up with
6 one a day. This is an exceptional day when I have had two
7 bad ideas.

8 The second idea is basically a trade off, and that
9 is to allow Turro and MMBI to submit a second set of
10 interrogatories to Mr. Loginow limited strictly to follow up
11 on his answers to the first set in exchange for withdrawing
12 the request to depose him.

13 The reason I bring that up is nobody here knows,
14 including me, when the Commission is going to act on that
15 motion, and this might be a way of getting additional
16 information from Mr. Loginow within dates certain. And if
17 you want to talk about that off the record or on the record,
18 we can do that. If you all agree it's a pretty bad idea and
19 you don't want to do it, I mean, I'm just throwing these
20 things out because ideas are coming into my head and, you
21 know, and I feel the need to express them.

22 Okay, why don't we go off the record and tell me
23 why that's a -- and you can discuss why that's a bad idea.

24 (Discussion off the record.)

25 JUDGE STEINBERG: We are back on the record.

1 And Mr. Naftalin, why don't you repeat on the
2 record what you said off the record about my idea? But
3 basically Mr. Naftalin did not want to proceed the way I
4 suggested, and he's going to state his reasons in case this
5 matter ever comes up again in the future.

6 MR. NAFTALIN: Thank you, Your Honor.

7 Our view is that we have come close to exhausting
8 the efficiency available in interrogatories, and we continue
9 to urge the view that a live oral deposition of Mr. Loginow
10 is the best and most efficient course to complete discovery
11 of information in connection with his participation in this
12 proceeding. And accordingly, we respectfully decline the
13 opportunity for further written interrogatories, and hope
14 that the Commission will grant our motion for authority to
15 take Mr. Loginow's deposition. And we recognize that the
16 Commission may never act upon it or, in fact, may deny it,
17 and we accept those consequences, but think that at this
18 point the only efficient and useful discovery option left
19 with respect to Mr. Loginow would be a deposition.

20 And so respectfully, we decline. But thank you,
21 Your Honor.

22 JUDGE STEINBERG: Okay. Does anybody want to add
23 anything to what Mr. Naftalin said?

24 Okay, while we were off the record we also
25 discussed the second outstanding discovery matter, and that

1 was the mission's request to the Bureau and the Bureau
2 reported that it was working on those, and would file them
3 as expeditiously as possible.

4 Is that correct, Mr. Aronowitz?

5 MR. ARONOWITZ: That's correct.

6 JUDGE STEINBERG: And then there is a third matter
7 arose and that was a motion to compel filed by Mr. Turro, I
8 guess yesterday?

9 MR. NAFTALIN: That's correct.

10 JUDGE STEINBERG: And that just hit my desk late
11 this morning, and I don't think we need to talk about that
12 today. We will just see how that plays out.

13 Okay, that's all that I have on the agenda for
14 today. Anybody else want to bring anything up?

15 Okay, Mr. Riley?

16 MR. RILEY: No, Your Honor.

17 JUDGE STEINBERG: Mr. Helmick?

18 MR. HELMICK: No, Your Honor.

19 JUDGE STEINBERG: Mr. Naftalin?

20 MR. NAFTALIN: No, thank you.

21 JUDGE STEINBERG: And, Mr. Aronowitz?

22 MR. ARONOWITZ: Can I take one moment?

23 JUDGE STEINBERG: Off the record?

24 MR. ARONOWITZ: Actually, yes.

25 JUDGE STEINBERG: Okay.

1 (Discussion off the record.)

2 JUDGE STEINBERG: We are back on the record.

3 Anything anybody wants to add? Mr. Aronowitz?

4 MR. ARONOWITZ: No, Your Honor.

5 JUDGE STEINBERG: Okay, and I went around the
6 table.

7 Okay, with that, I think we have completed our
8 tasks for today, and so we will go off the record, and
9 hopefully the next time we see each other will be December
10 2nd, and if something comes up let me know and I will see if
11 I can generate some more bad ideas.

12 Okay, we will go off the record. Thanks.

13 (Whereupon, at 11:23 a.m., the prehearing
14 conference was concluded.)

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REPORTER'S CERTIFICATE

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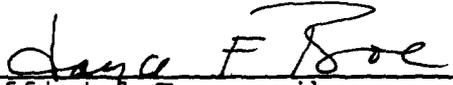
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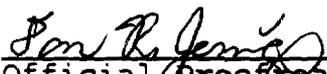
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